

## HIGHLAND CAPITAL MANAGEMENT, L.P.'S, JOINDER TO ACIS' WITHDRAWAL OF ITS MOTION TO AMEND ORDER AND REQUEST FOR ATTORNEYS' FEES

Highland Capital Management, L.P. (“HCMLP”) respectfully submits this joinder (the “Joinder”) to *Acis’ Withdrawal of Its Motion to Amend Order and Request for Attorneys’ Fees* [Docket No. 60] (the “Withdrawal”)<sup>1</sup> and in support thereof, states as follows:

### **JOINDER**

1. On November 24, 2021, Acis filed *Acis’ Motion to Amend Order and Request for Attorneys’ Fees* [Docket No. 57] (the “Acis Motion”) purportedly seeking to re-assert previously released claims against Scott Ellington and Isaac Leventon. Whether Acis’s actions were intentional or not, filing the Acis Motion violated the settlement agreement between HCMLP and Acis that this Court approved in October 2020 (the “Settlement Agreement and Release”)<sup>2</sup> and, in doing so, created a risk of litigation between HCMLP and Mr. Ellington and Mr. Leventon regarding their potential (but HCMLP believes baseless) indemnification claims against HCMLP and its affiliates.<sup>3</sup>

2. Regrettably, instead of simply withdrawing the Acis Motion, Acis attempts to justify its conduct. While HCMLP disputes Acis’s allegations concerning Mr. Seery and the conversations between him and Joshua Terry, there is *no* dispute that, before filing the Acis Motion, Acis never (i) sought or obtained HCMLP’s written consent to waive or modify the Settlement Agreement and Release, as required (Settlement Agreement § 9); (ii) provided a copy of the Acis Motion to HCMLP or otherwise described the purported basis for vitiating the releases; (iii) conferred with HCMLP’s counsel; (iv) informed HCMLP that Acis intended to re-open (or

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<sup>1</sup> All capitalized terms used but not defined herein have the meanings given to them in the Withdrawal.

<sup>2</sup> True and accurate copies of the Settlement Agreement and Release are attached hereto as **Exhibits 1 and 2**, respectively.

<sup>3</sup> The threat of a lawsuit is not just theoretical. Promptly after the Acis Motion was filed, Mr. Leventon, on behalf of himself and Mr. Ellington, demanded indemnification from Highland CLO Funding, Ltd., a Guernsey-based investment vehicle managed by a subsidiary of HCMLP.

leave open) the Acis Bankruptcy Case; or (v) otherwise sought HCMLP's consent to declare the releases granted to Mr. Ellington and Mr. Leventon under the Settlement Agreement null and void.

3. While the language of the Withdrawal is disappointing, HCMLP is grateful to avoid being dragged into more pointless and value-destructive litigation.

4. HCMLP reserves all rights that it may have, including the right to seek "reasonable and necessary attorneys' fees and costs" (Settlement Agreement § 13, Release, § 5(f)) arising from Acis's violation of the Settlement Agreement and Release.

5. For the foregoing reasons, HCMLP respectfully requests that this Court grant the Withdrawal.

*[Remainder of Page Intentionally Blank]*

Dated: December 12, 2021

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**CERTIFICATE OF SERVICE**

This is to certify that, on December 12, 2021, a true and correct copy of the foregoing Joinder was served electronically via the Court's ECF system on those parties registered to receive electronic notice.

/s/ Zachery Z. Annable  
Zachery Z. Annable